

IOWA DEPARTMENT OF NATURAL RESOURCES
ADMINISTRATIVE CONSENT ORDER

IN THE MATTER OF:

William Norton
Cedar County, Iowa

**ADMINISTRATIVE
CONSENT ORDER
NO. 2008-WW- 09**

TO: William Norton
1614 290th Street
Tipton, IA 52772

I. SUMMARY

This administrative consent order (order) is entered into between William Norton and the Iowa Department of Natural Resources (Department). Mr. Norton hereby agrees to cease all illegal discharges to waters of the state, to obtain an Iowa Operation permit and to pay a penalty. In the interest of avoiding litigation, the parties have agreed to the following provisions.

Any questions regarding this order should be directed to:

Relating to technical requirements:

Kurt Levetzow, Environmental Specialist
Senior
IDNR Field Office #6
1023 W. Madison.
Washington, IA 52353
Ph: 319/653-2135

Relating to legal requirements:

Carrie Schocnebaum,
Attorney at Law
Iowa Department of Natural Resources
Wallace State Office Bldg. 502 E. 9th Street
Des Moines, Iowa 50319-0034
Ph: 515/281-0824

II. JURISDICTION

The parties hereby agree that this order is issued pursuant to Iowa Code section 455B.175(1), which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division III, Part I, and the rules promulgated or permits issued pursuant thereto, and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which authorize the Director to assess administrative penalties.

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III. STATEMENT OF FACTS

The Department and Mr. Norton hereby agree to the following statement of facts:

1. Mr. Norton owns and operates a dairy farm located at Section 11, T 79 N, R 2 W in Cedar County, Iowa. This operation produces industrial wastewater (wastewater) that is drained into a septic tank which discharges onto land that is adjacent to a tributary to Sugar Creek.
2. On May 11, 2007, the Department received a complaint stating that a tributary to Sugar Creek was running white. The complainant informed the Department that a dairy operation is located across the road from the tributary.
3. On May 11, 2007, Kurt Levetzow, an Environmental Specialist Senior, of the Department went to Mr. Norton's dairy farm to investigate the complaint. While there, Mr. Levetzow spoke with Mr. Norton who stated that a compressor that cools his bulk milk storage tank failed, which resulted in 5700 pounds of spoiled milk. Thus, he drained the milk into a septic tank that discharges onto his property and flows into a tributary to Sugar Creek. Mr. Levetzow observed and photographed milk in the tributary to Sugar Creek and in Sugar Creek.
4. On May 16, 2007, the Department sent a Notice of Violation (NOV) for the above discussed discharge to Mr. Norton. This NOV informed Mr. Norton that the discharge violated Iowa law and required him to submit, to the Department, by May 24, 2007, a written statement of what wastewater the septic tank receives and how he intends to ensure that a discharge from the septic tank to the tributary of Sugar Creek does not occur in the future.
5. On May 23, 2007, the Department received a written statement from Mr. Norton. This statement informed the Department that the septic tank receives the following amount of wastewater: once daily a ½ cup of soap, and 15 gallons of hot water. This is followed by an acid rinse of 3 to 4 ounces of acid mixed with 15 gallons of warm water. Then, prior to milking, the lines are rinsed with chlorine.
6. On September 26, 2007, the Department sent Mr. Norton a letter which informed him that the wastewater from this facility can not be discharged through a septic tank onto land and into a tributary to Sugar Creek. Thus, Mr. Norton was asked to submit a plan of action (POA) to the Department no later than October 29, 2007. This POA should detail how Mr. Norton intends to legally handle the wastewater in the future. To date a POA has not been submitted.
7. On November 28, 2007, Mr. Levetzow called Mr. Norton to inquire as to the status of submittal of the POA. Mr. Norton stated that he was still trying to figure out how to dispose of the wastewater.

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IV. CONCLUSIONS OF LAW

The Department and Mr. Norton hereby agree that the following conclusions of law are applicable to this matter:

1. Iowa Code section 455B.173 authorizes and requires the Environmental Protection Commission to promulgate rules relating to the operation of waste disposal systems, including rules relating to monitoring and reporting requirements. The Commission has done so at 567 IAC chapters 60-64. Subrule 64.3(1) prohibits the operation of a waste disposal system without or contrary to the terms of a permit. The above stated facts show noncompliance with this provision.

2. Iowa Code section 455B.186 and 567 IAC 62.1(1) prohibit the discharge of pollutants into waters of the State, except for adequately treated pollutants discharged pursuant to a permit from the Department. Because no such permit has been issued for this facility, the foregoing facts establish that this provision has been violated.

V. ORDER

THEREFORE, the Department orders and Mr. Norton agree to comply with the following provisions in order to cease, abate, and redress the above-cited violations:

1. Mr. Norton shall cease all illegal discharges;
2. Mr. Norton shall contact an engineer within 10 days of the Director signing this order for assistance in the development of a POA;
3. Mr. Norton shall submit a POA to the Department for its approval within 60 days of the Director of the Department signing this order;
4. Mr. Norton shall implement the Department approved POA no later than 3 months after the Department has approved it; and
5. Mr. Norton shall pay a penalty of \$2,500 within 30 days of the Director of the Department signing this order.

VI. PENALTY

1. Iowa Code section 455B.191 authorizes the assessment of civil penalties of up to \$5,000.00 per day of violation for the violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. In addition, Iowa Code section 455B.109 authorizes the Environmental Protection Commission to establish by

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rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties in 567 IAC chapter 10. Pursuant to these rules the Department has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an order with the assessment of penalties.

2. **Economic Benefit:** The wastewater discharged from this facility could have been avoided through the use of alternative disposal methods such as permitted land application. This would have been more time consuming and would have cost more than the method used. Therefore, \$500.00 is assessed for economic benefit.

3. **Gravity of the Violation:** The potential impact from the unpermitted discharge of this type of wastewater constitutes an immediate or potential danger to the environment, as well as the public's health and safety. Therefore, \$1,500.00 is assessed for gravity.

4. **Culpability:** Mr. Norton has the duty to remain knowledgeable of the Department's requirements and to be alert to the probability that his conduct is subject to the Department's rules. Therefore, \$500.00 is assessed for culpability.

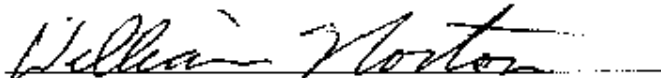
VII. WAIVER OF APPEAL RIGHTS

Iowa Code section 455B.175, and 561 IAC 7.5(1), as adopted by reference by 567 IAC chapter 7, authorize a written notice of appeal to the Environmental Protection Commission. This order is entered into knowingly by and with the consent of Mr. Norton. By signature to this order, all rights to appeal this order are waived.

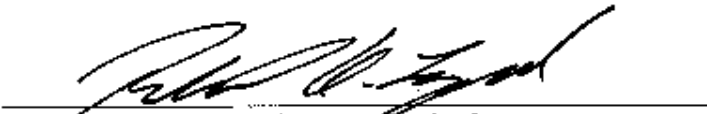
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VIII. NONCOMPLIANCE

Compliance with sections V of this order constitutes full satisfaction of all requirements pertaining to the violations described in this order. Failure to comply with this order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code section 455B.191.


William Norton

Dated this 27 day of
March, 2008.


RICHARD A LEOPOLD, DIRECTOR
IOWA DEPARTMENT OF NATURAL RESOURCES

Dated this 7 day of
April, 2008.

William Norton, Field Office 2, Carrie Schoenebaum; Kurt Levtezow, I.B.1.

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